

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KING COUNTY, et al.,

Plaintiffs,

No. 2:21-cv-00477

V.

STIPULATED PROTECTIVE ORDER

TEVA PHARMACEUTICAL INDUSTRIES,
LTD., et al.,

Defendants.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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2 **"CONFIDENTIAL" AND "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"**

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4 **MATERIAL**

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6 "Confidential" material shall include any and all discovery and other materials or
7 information property designated as "Confidential" or "Highly Confidential – Attorneys' Eyes
8 Only," whether such Confidential material is a document (electronic or otherwise), information
9 contained in a document, information revealed during a deposition testimony, information revealed
10 in a response to an interrogatory or a request for admission, or information otherwise revealed.

11 2.1 **Confidential Information.** A producing party or non-party may designate any non-
12 public information, document, or thing, or portion of any document or thing, as
13 "CONFIDENTIAL" if the producing party reasonably believes public disclosure would cause
14 competitive harm and it contains: (a) trade secrets; (b) technical information; (c) business,
15 marketing, financial, sales, and/or product strategy; (d) market analysis and/or competitive
16 analysis; (e) third-party confidential information; (f) revenue, profits, or compensation; (g) private
17 or confidential personal information; or (h) information which the producing party otherwise
18 believes in good faith to be entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of
19 Civil Procedure. This includes information received in confidence from third parties, so long as
20 the producing party or non-party has a good faith belief that the information is, at the time of
21 designation, entitled to protection under Federal Rule of Civil Procedure 26(c) or other applicable
22 law.

23 2.2 **Highly Confidential – Attorneys' Eyes Only Information.** A producing party or
24 non-party may designate as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
25 nonpublic, highly sensitive business or personal information, the disclosure of which is highly
26 likely to cause significant harm to an individual or to the producing party's or non-party's business
or competitive position, including but not limited to: (a) information related to pricing (including
but not limited to credits, discounts, returns, allowances, rebates, and chargebacks), projected
future sales, volumes, profits, revenue, costs, and strategy regarding the same, (b) claims and

reimbursement data, (c) agreements with third parties, (d) transactional data, (e) information protected by foreign, federal or state privacy laws, (f) research, design, and development of products, or (g) information related to settlement of litigation or negotiations thereof.

3. **SCOPE**

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

Nothing in this Order prevents or restricts counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential material, including documents stamped "Confidential" or "Highly Confidential – Attorneys' Eyes Only," so long as he or she does not disclose its specific contents

4. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

4.1 **Basic Principles.** A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

4.2 **Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"**
Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any material designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

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4 (a) outside counsel of record retained by the Parties as counsel for this
5 litigation, as well as paralegals, assistants, and employees of the respective law firms of these
6 outside counsel, to the extent such persons' duties and responsibilities require access to material
7 designated Highly Confidential - Attorneys' Eyes Only. Each such person shall have an obligation
8 to maintain the confidentiality of the material so designated;

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10 (b) up to two (2) designated in-house counsel for each Party, who may be
11 substituted by providing written notice of a substitution of in-house counsel to the parties prior to
12 any disclosure, as well as the secretarial and clerical employees of each party, who work regularly
13 with the designated in-house counsel, for the sole purpose of assisting in this litigation;

14 (c) any independent outside expert or consultant retained to assist with
15 preparation for pre-trial or trial proceedings by the attorneys described in section 5(a)(i) and who
16 is not a current employee of any of the Parties in the litigation, as well as support staff and assistants
17 of any such expert to the extent such persons' duties and responsibilities require access to material
18 designated Highly Confidential – Attorneys' Eyes Only and who have signed the
19 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

20 (d) a person who prepared, received, or reviewed the Highly Confidential –
21 Attorneys' Eyes Only information prior to its production here, provided (a) it appears on the face
22 of the document or from other evidence that the person prepared, received, or reviewed the Highly
23 Confidential – Attorneys' Eyes Only information, (b) the party wishing to make the disclosure has
24 received permission from the producing party, (c) the person is an employee of the producing
25 party, (d) the person has been designated as a Rule 30(b)(6) witness by the producing party, or (e)
26 the party wishing to make the disclosure has a reasonable, good faith basis to believe that the
person prepared, received, or reviewed the Highly Confidential – Attorneys' Eyes Only
information or was involved in the subject matter described in such document. Pages of
transcribed deposition testimony or exhibits to depositions that reveal confidential material must

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5 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
6 under this agreement;

7 (e) the Court and court personnel, including court reporters providing services
8 in court or at depositions for the purpose of assisting the Court in this Litigation and stenographic
9 employees, court reporters, and typists for the sole purpose of recording or transcribing testimony,
10 documents, or information relating to this Litigation;

11 (f) interpreters, translators, copy services, graphics services, litigation
12 consultants, outside exhibit preparation companies, independent support service personnel, and
13 database/coding service personnel providing services for counsel described in section 5(a)(i), to
14 the extent necessary to prosecute or defend the Litigation;

15 (g) any mediator retained by the Parties or appointed by the Court, and
16 employees of such mediator who are assisting in the conduct of the mediation and who have signed
17 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

18 (h) any present officer, director, or employee of the party or non-party who
19 produced or designated the Highly Confidential - Attorneys' Eyes Only information unless
20 otherwise prohibited from receiving or accessing the information; and

21 (i) any person to whom the producing party or non-party agrees (in writing)
22 Highly Confidential - Attorneys' Eyes Only information may be disclosed and who have signed
23 the "Acknowledgment and Agreement to Be Bound" (Exhibit A).

24 The parties agree to meet and confer about any additional reasonable requests.

25 4.3 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
26 by the court or permitted in writing by the designating party, a receiving party may disclose any
material designated as "CONFIDENTIAL" only to:

27 (a) persons identified in section 4.2;
28 (b) the officers, directors, and employees (including in house counsel) of the
29 receiving party to whom disclosure is reasonably necessary for this litigation;

(c) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement; and

(d) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material,

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4 documents, items, or oral or written communications that qualify, so that other portions of the
5 material, documents, items, or communications for which protection is not warranted are not swept
6 unjustifiably within the ambit of this agreement.
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8 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
9 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
10 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
and burdens on other parties) expose the designating party to sanctions.
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12 If it comes to a designating party's attention that information or items that it designated for
protection do not qualify for protection, the designating party must promptly notify all other parties
13 that it is withdrawing the mistaken designation.
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15 5.2 Manner and Timing of Designations. Except as otherwise provided in this
agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
16 ordered, disclosure or discovery material that qualifies for protection under this agreement must
17 be clearly so designated before or when the material is disclosed or produced.
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19 (a) Information in documentary form: (e.g., paper or electronic documents and
deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
20 the designating party must affix the word(s) "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
21 – ATTORNEYS' EYES ONLY" to each page that contains confidential material and, to the extent
possible, to the media (i.e., disc, hard drive, etc.) on which the documents are provided. If only a
23 portion or portions of the material on a page qualifies for protection, the producing party also must
24 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).
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26 (b) Testimony given in deposition or in other pretrial proceedings: the parties
and any participating non-parties must identify on the record, during the deposition or other pretrial
proceeding, all protected testimony, without prejudice to their right to so designate other testimony
after reviewing the transcript. Any party or non-party may, within thirty days after receiving the
transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or

exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word(s) "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
intervention, the designating party may file and serve a motion to retain confidentiality under Local
Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels
disclosure of any information or items designated in this action as "CONFIDENTIAL" or
"HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," that party must:

(a) promptly notify the designating party in writing and include a copy of the
subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to
issue in the other litigation that some or all of the material covered by the subpoena or order is
subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by
the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
material to any person or in any circumstance not authorized under this agreement, the receiving
party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
(b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
person or persons to whom unauthorized disclosures were made of all the terms of this agreement,

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and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
5 Bound" that is attached hereto as Exhibit A.
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7 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
8 **MATERIAL**

9 When a producing party gives notice to receiving parties that certain inadvertently
10 produced material is subject to a claim of privilege or other protection, the obligations of the
11 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
12 is not intended to modify whatever procedure may be established in an e-discovery order or
13 agreement that provides for production without prior privilege review. The parties agree to the
14 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

15 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

16 Within 60 days after the termination of this action, including all appeals, each receiving
17 party must return all confidential material to the producing party, including all copies, extracts and
18 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

19 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
20 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
21 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
22 product, even if such materials contain confidential material.

23 The confidentiality obligations imposed by this agreement shall remain in effect until a
24 designating party agrees otherwise in writing or a court orders otherwise.

25 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

26 DATED this 28th day of June, 2021.

KELLER ROHRBACK L.L.P.

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41 Pharmaceuticals USA, Inc. and Teva
42 Neuroscience, Inc.

43 PURSUANT TO STIPULATION, IT IS SO ORDERED

44 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
45 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
46 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
47 documents, including the attorney-client privilege, attorney work-product protection, or any other
48 privilege or protection recognized by law.

49 DATED:June 29, 2021

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51 Robert S. Lasnik
52 United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *King County, et al. v. Teva Pharmaceutical Industries, LTD, et al.*, 2:21-cv-00477. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity not in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature: